

### Remarks

The Office Action dated July 30, 2008 has been carefully considered. Applicants respectfully submit that the Examiner has taken improper "Official Notice" of facts neither disclosed, suggested or inherent in the asserted references nor common knowledge to those of ordinary skill in the relevant art. Without resort to these illicit stipulations the references do not support the Examiner's case. Applicants therefore file this Request for Reconsideration wherein the flaw in deductive reasoning leading to the stipulations is set forth and counter-indicated in detail. Taken with arguments already on record, Applicants believe this response is effective to establish patentability of the claims over the references and allowance is respectfully requested.

Claims 76 - 119 remain pending and claims 76, 83-93 and 119 are currently subject to examination.

### 35 U.S.C. §103

**Claims 76, 83-93, and 119** are finally rejected under 35 U.S.C. §103(a) as being unpatentable over Japanese Patent Document 10-276961 to Watanabe et al. ("Watanabe"), in view of U.S. Patent Serial No. 5,306,435 to Ishikawa et al. ("Ishikawa") and Canadian Patent No. 1052685A to Wu et al. ("Wu"). The Examiner repeats his previous arguments and applies Watanabe for reasons of record. In particular, the Examiner asserts that Watanabe discloses methods for treating leather shoes comprising spraying a water solution of a gel detergent inside the shoes by pressure, to remove dirt, odor and fungi present on a shoe without harming the shoes. The detergent disclosed in Watanabe is composed of palm oil and soap (including a surfactant), amino acid group containing water at pH 5, orange fruit surfactant, herbal oil extracts, and enzyme protease. The methods disclosed for cleaning the inner part of the shoes includes pressure-spray application of a treatment composition and wiping by a brush, while cleaning the outside of the shoes comprises quick washing using a gel detergent B made by mixing palm oil, glycerin, palm kernal oil, lanolin and wax with acidic water. According to the Examiner, Watanabe teaches that a softening agent is sprayed and dried, then a fluorine containing water repellent is sprayed on the outer layer of the shoes. The Examiner further asserts that Watanabe discloses that the leather is ordinary leather, but is silent about whether or

not significant levels of a tanning agent such as Chromium is removed from the leather during washing.

The Examiner notes that Watanabe discloses that washing by the methods of Watanabe does not damage the shoes and therefore "takes official notice that the tanned leather stays practically intact after washing, i.e. the washing does not remove any significant amount of components of the leather including any tanning agent such as chromium."

Further, the Examiner takes the position that since the detergent of Watanabe is disclosed as "capable of removing dirt", the detergent must necessarily deliver a calcium/magnesium removal agent to the shoes "because dirt normally contains calcium and magnesium." The Examiner relies on the Wu disclosure of a cleaning composition for casual leather shoes that comprises, inter alia, various surface active agents, deionized water, brightening agents, "dissolution synergists," bactericides, and a colloid fatty cleaning agent" disclosed by Wu as capable of removing Ca/Mg ions for the implication that the composition of Watanabe, since it removes dirt, therefore also removes Ca/Mg ions.

Present independent claim 76 is directed to a method for treating one or more shoes comprising at least one surface made from a natural leather. The method comprises contacting the one or more shoes directly or indirectly with one or more treating compositions, each of which comprises one or more benefit agents that imparts one or more desired benefits to the one or more shoes when the treating composition is applied directly or indirectly to the one or more shoes prior to and/or during and/or after washing the one or more shoes with or in an aqueous medium, wherein said treating composition is formulated to deliver an effective level of a calcium/magnesium removal agent without removing significant levels of chromium from the natural leather so that any damage as a result of washing the one or more shoes with or in an aqueous medium with application of the treating composition is reduced compared to washing the one or more shoes with or in an aqueous medium without application of the treating composition.

The primary reference Watanabe is directed to cleaning methods for shoes that involve pressure-spray application of vegetable-based compositions to the interior of shoes. Watanabe notes problems in the art associated with the difficult in washing the insides of shoes without resorting to immersion in aqueous solutions or mechanical agitation, which damage shoes. Watanabe also notes the problems associated with known odor-removing solutions such as sprinkle powders. Watanabe teaches spraying a detergent under pressure so that the detergent is dispersed uniformly inside the shoe without scrubbing or brushing or requiring that the detergent remain in the shoe for long periods of time. This, according to Watanabe, prevents the associated damage to leather.

The Examiner argues that since Watanabe discloses that the methods "do not damage shoes," the detergents employed in the Watanabe methods do not damage the leather portion of a shoe. Applicants submit that Watanabe never addresses the damage to shoes caused by detergents. The lack of damage to shoes disclosed by Watanabe relates specifically to the mechanical aspects of the Watanabe cleaning methods, and to avoidance of prolonged exposure to moisture/aqueous conditions. Watanabe discloses methods that involve spray misting and wiping of detergents on to the shoes, suctioning the interior of shoes, and ozone-treatment in a sealed bag for several hours followed by exposure to charcoal for 24 hours. Watanabe seeks to minimize exposure to water to prevent mold formation and water/detergent penetration to the inner core of the shoe material. In another embodiment Watanabe adds a final step of sprinkling a fluorine-repelling system over the exterior of the shoe. Once again, Watanabe notes that by keeping the actual wash portion of the process to less than 15 minutes, mold formation and bruising are prevented.

With respect specifically to damaging shoes by the cleaning process, Watanabe notes that "as a result of shortening working hours" (P18) and as a result of the fact that the detergent never permeates the core of the shoe (P18), mold and damage to the leather are prevented." Watanabe also notes that the pressure of the spray may be adjusted to prevent damage, and that the extreme drying methods may prevent mold related damage to leather.

Importantly, Watanabe never discusses impact of detergent on the leather portion of a shoe and never discloses detergent formulation as a means to control or prevent damage to shoes during washing. Watanabe is concerned with avoiding mechanical damage or "bruising" to surface leather of a shoe that typically occurs during a dry cleaning processes, and with avoiding exposing the shoe to long periods of moisture/conditions for mold growth. Watanabe is also concerned with providing cleaning methods that remove human organic matter which results in odors and bacterial growth on the inside of a shoe, without resort to immersion or harsh cleaning conditions typically relied on to control this problem. Watanabe never discusses the use of a Ca/Mg removal agent or problems associated with typically resultant undesirable removal of chromium, or formulation manipulations for achieving selective transition metal ion removal.

The detergents disclosed by Watanabe are conventional and are disclosed to include a high percent of soap (28%, e.g. P13), acidic conditions, and the presence of anionic surfactant systems (P13). Applicants do not dispute the Examiner's contention that the detergents of Watanabe remove transition metal ions from the shoes, including Ca/Mg and Cr. Indeed, the detergent formulations of Watanabe specifically include ingredients instantly disclosed as having the potential to remove chromium (see Specification, e.g. page 25, lines 26-35, providing guidance on formulation manipulations which preserve chromium in leather).

Ishikawa is applied to evidence that it is common knowledge in the art that "chromium salt" is generally used for tanning leather. Applicants do not disagree with the statement that tanning may be achieved via vegetable or mineral tanning agents, and that a common mineral tanning agent is chromium. Watanabe mentions "leather" in several places and Applicants agree that the leather is necessarily tanned and that the term "leather" in this context includes Cr-tanned leather within its scope.

Wu is a one paragraph Chinese patent abstract with very limited disclosure. It is applied for supporting the Examiner's contention that "dirt normally contains calcium and magnesium so that anything that removes "dirt" removes these elements." Wu actually discloses a decontaminating composition for leather shoes that includes many ingredients such as brightening agents, surfactants, bactericides, and fatty cleaning agents. Wu discloses that the

composition removes Ca and Mg. Applicants disagree with the Examiner's contention that since dirt contains Ca and Mg, anything that removes dirt removes these elements, but nonetheless agree that the cleaning composition of Wu removes transition metal ions.

Applicants note that the instant inventive methods require, inter alia, a treatment composition formulated to deliver an effective level of a calcium/magnesium removal agent without removing significant levels of chromium from the natural leather. As noted in the instant specification, dirt which is particulate and includes, e.g. clay and soil, includes Ca and Mg ions which may be removed with agents which bind transition metal ions. This is problematic in the cleaning of leather shoes since while it is desirable to remove Ca and Mg ions, tanned leather contains chromium which is necessary for the suppleness and integrity of the leather so that removal of Cr ions is undesirable. The instant specification notes that conventional formulations do not recognize this issue and include non-selective transition metal ion removing agents which may damage any leather present in a shoe that is washed with conventional detergents. The instant specification, as noted previously, provides ample guidance for how to formulate a treatment composition to be selective for the removal of Ca and Mg ions and avoid undesirable removal of Cr ions.

As noted by the Examiner, Watanabe and Wu disclose very general detergents that include components that remove Ca and Mg, generally recognized as desirable in the art of shoe treatment compositions. However, the Examiner errs in his deductive reasoning in concluding that since Watanabe discloses that his methods do not damage shoes, including leather shoes, his detergents therefore do not remove Cr ions in accordance with the present methods. Neither Ishikawa nor Wu are relevant to this error. In order to effectively communicate this flaw, Applicants note the Examiner's reasoning below.

Given the following four premises supported by the specification and the art:

- (a). Conventional shoe treatment methods include application of treatment compositions that typically remove transition metal ions.
- (b). Removal of Ca/Mg ions is desirable, but Applicants recognize that in leather shoes removal of Cr ions damages the leather.

- (c) Therefore, selective removal of Ca/Mg ions without removing Cr ions will reduce treatment-related damage to the leather portion of shoes.
- (d) Watanabe discloses reducing wash-related damage to shoes by avoiding dry cleaning, mechanical agitation, high pressures and by minimizing exposure to moisture.

Based on these premises, the Examiner deductively concludes the following:

- (e) Watanabe discloses treatment compositions that selectively remove Ca/Mg ions without removing Cr ions.

Applicants respectfully submit that the conclusion drawn as (e) requires a leap of logic beyond what is provided by premises (a)-(d). It is logically impossible to deductively arrive at the Examiner's conclusion. In fact, Watanabe discloses treatment formulations that are instantly disclosed as resulting in the unselective removal of transition metal ions. Watanabe is focused on other causes of wash-related shoe damage, and when Watanabe discloses that his methods do not result in damaging the shoes, Watanabe is clearly speaking with respect to the type of damage being discussed/addressed. It is absurd to consider otherwise. On the contrary the following deductive reasoning is fully supported by the disclosures:

Given:

- (a) [As stipulated by the Examiner based on Wu] Watanabe discloses the use of conventional detergents that contain Ca/Mg removing agents.
- (b) Watanabe discloses use of detergents containing formulation components such as anionic surfactants at acidic pH.
- (c) The instant specification teaches that conventional Ca/Mg ion removal agents in compositions also comprising anionic surfactants at acidic pH remove Cr ions.

Therefore:

- (d) Use of the detergents disclosed by Watanabe remove Cr ions if used to wash/treat leather.

As instantly disclosed, removal of Cr ions from tanned leather reduces the suppleness of the leather and damages the leather. The fact that Watanabe fails to recognize this source of damage to leather is not relevant to the analysis.

To establish prima facie obviousness of the claimed invention, all the claim limitations must be taught or suggested by the prior art, *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580

(CCPA 1974). Watanabe fails to teach or suggest methods for treating shoes comprising, inter alia, application of a treating composition formulated to deliver an effective level of a calcium/magnesium removal agent without removing significant levels of chromium from the natural leather, thereby relatively reducing wash-related damage to shoes. Watanabe teaches methods including various ways to avoid wash-related damage to shoes including avoidance of dry cleaning, mechanical agitation and minimizing exposure to water, but Watanabe does not recognize or address the damage associated with the use of cleaning agents in formulations which non-selectively remove transition metal ions causing Cr ion removal from leather portions of shoes. The Examiner's contention that because Watanabe discloses that damage to the shoes is avoided by use of his methods, therefore Watanabe must disclose Applicants' methods represents flawed deductive reasoning. Neither of the secondary references teaches or suggests methods which comprise treatment compositions formulated for selective transition metal ion removal nor do they acknowledge the problem of Cr removal from leather.

Hence, the rejection of base claim 76 and claims 83-93, and 119 dependent therefrom under 35 U.S.C. §103(a) as being unpatentable over Watanabe in view of Ishikawa and Wu is overcome. Reconsideration is respectfully requested.

Claims **85, 90-92, and 119** are finally rejected under 35 U.S.C. § 103(a) as being unpatentable over Watanabe in view of Japanese Patent Document No. 09271597 to Yoshioka et al. ("Yoshioka"). The Examiner notes that Watanabe fails to teach that shoes are placed into a flexible bag but applies Yoshioka for the disclosure that shoes can be washed in flexible bags to prevent damage to shoes.

Applicants note that all these claims depend directly or indirectly from base claim 76. The nonobviousness of claim 76 over Watanabe is established above. Yoshioka fails to address or overcome the deficiencies of Watanabe as to the base claim.

Dependent claims are nonobvious under section 103 if the independent claims from which they depend are nonobvious. *Hartness Int'l, Inc. v. Simplimatic Eng'g Co.*, 819 F.2d 1100, 1108, 2 USPQ2d 1826, 1831 (Fed. Cir. 1987). Hence, claims 85, 90-92 and 119 are nonobvious

and patentable over Watanabe and Yoshioka and the rejection under 35 U.S.C. §103 is therefore overcome. Reconsideration is respectfully requested.

The foregoing is believed to be a comprehensive response to the rejections under 35 U.S.C. § 103 set forth in the Office Action dated July 30, 2008. Applicants urge the Examiner to contact Applicants' agent at the number listed below if any unresolved issues remain. Otherwise reconsideration and an early allowance are respectfully requested.

/Denise M. Everett/  
Denise M. Everett  
U.S.P.T.O. Reg. No. 47,552  
Attorney for Applicants  
Dinsmore & Shohl LLP  
513-977-8787 (tel)  
513-977-8141 (fax)